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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

In re the Marriage of ALI and ELHAM
HASHEMIAN.

ALI HASHEMIAN,

Appellant,

v.

ELHAM LUKCHI,

Respondent.

A153900

(Contra Costa County
Super. Ct. No. D1304781)

Ali Hashemian (Ali), in propria persona, appeals from the trial court's judgment on reserved issues in his and his former spouse Elham Lukchi's (Elham) marital dissolution action.¹ Because Elham did not file a responsive brief and Ali waived oral argument, the appeal is submitted on the record and Ali's opening brief. (Cal. Rules of Court, rule 8.220(a)(2).)

Ali contends: (1) the trial court's spousal support order was an abuse of discretion; (2) the trial court should have awarded him more than \$347 in monthly child support for the support of the parties' minor child, R.H.; (3) the trial court erred in terminating child support in February 2018 when R.H. turned 18 years old; and (4) the trial court erred in

¹ For ease of reference and without any disrespect intended, we refer to the parties by their first names. (*In re Marriage of Shaffer* (1999) 69 Cal.App.4th 801, 803, fn. 2.)

holding him solely responsible for the parties' credit card debt. We reject his contentions and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Ali and Elham were married on October 16, 1992, and separated almost 21 years later on September 16, 2013. They have two sons.

After a number of disputed issues were litigated and a status-only judgment was filed, a trial on the remaining issues of child and spousal support, division of certain property, and attorney fees and costs took place over the course of five days between May and September 2017. A judgment on reserved issues was filed January 10, 2018.

As to support, the trial court awarded \$4,027 in spousal support to Elham for the period from April 14, 2014, to December 31, 2016. The court attributed no income to Elham and \$16,872 per month of income to Ali, comprised of \$7,166 in base income and an additional \$9,706 for personal charges on his credit card that were paid for by his businesses. The court did not order any child support payments for this time period.

For the time period from January 1 to September 30, 2017, the trial court awarded Elham \$2,804 per month in spousal support. The court imputed \$27,000 in annual income to Elham and found Ali's income was \$14,049 per month, comprised of \$5,000 in base income and an additional \$9,049 for personal charges on his credit card that were paid for by his businesses. The court also awarded \$347 in monthly child support to Ali, who had custody of R.H., for a net payment from Ali to Elham of \$2,457 per month.

For the time period beginning October 1, 2017, and until modified, the trial court awarded Elham \$3,000 per month in "long term" spousal support. The court ordered the \$347 monthly child support payments from Elham to Ali to continue until R.H. "emancipates"

In ordering "long term" spousal support, the trial court evaluated all of the factors set forth in Family Code section 4320, including the marital standard of living and length of marriage, the parties' age and health, the extent to which the supported party's earning

capacity was impaired by periods of unemployment incurred to permit the supported party to devote time to domestic duties, the ability of the supporting party to pay support, the needs of each party based on the marital standard of living, the ability of the supported party to engage in gainful employment, the tax consequences to each party, and the balance of hardships to each party.

In particular, the trial court found that Ali has two doctoral degrees and is the owner of—or has interests in—several businesses including “BSI, Brain Wellness Center, LLC, Mind Builders or the American College of Behavioral Medicine.” The court found that Elham, who has a high school diploma and cosmetology license, has worked as a hairstylist and has the ability to engage in gainful employment.

The trial court found that “prior to 2009 through 2012, the parties enjoyed an upper middle class standard of living wherein they lived in a two million plus dollar home . . . in Danville, California.” “[D]uring the vast majority” of the marriage, the parties leased luxury vehicles and took many vacations. Their annual income before 2008 was between \$400,000 and \$450,000, and they “employed a nanny, a nurse, a driver, housekeeper, gardener, pilot and plane as part of their luxurious lifestyle”

Beginning in 2009, the family businesses began to fail and the parties’ financial situation changed significantly. They were forced to sell their family home in 2012 as it was about to go into foreclosure. “Despite [these] limitations,” Ali’s earning capacity was not “impaired be [*sic*] periods of unemployment” and he “managed to maintain self-employment businesses, albeit limited” The trial court found that while the parties were no longer living at the marital standard and Ali’s ability to pay support had changed, he nevertheless had the ability to pay the support as ordered.

DISCUSSION

1. Spousal Support

Ali contends the trial court’s spousal support order was an abuse of discretion. We reject his contention.

Spousal support awards are reviewed for abuse of discretion. (*In re Marriage of Campi* (2013) 212 Cal.App.4th 1565, 1572.) “[W]e do not substitute our judgment for that of the trial court, and we will disturb the trial court’s decision only if no judge could have reasonably made the challenged decision. [Citation.]” (*In re Marriage of Cryer* (2011) 198 Cal.App.4th 1039, 1046–1047.)

Ali challenges the spousal support orders on several grounds. First, he argues the trial court made a “[m]istake in [c]omputation of [i]ncome” when it attributed \$7,166 in base income to him for the time period from April 14, 2014, to December 31, 2016. As the court stated in the judgment, however, Ali admitted in a declaration signed May 27, 2014, that he was earning \$86,000 per year, or \$7,166 a month. Thus, there was substantial evidence—i.e., Ali’s own admission—from which the court could reasonably find that his monthly income was \$7,166.

Ali asserts the trial court should have relied on his “actual income-tax [filings],” which show he earned less. As stated, however, the court was entitled to rely on Ali’s admission that he was earning \$7,166 per month. This was especially so because here, there were *two* tax returns in the record that contained conflicting information. The court stated there were “discrepancies in the reporting of income,” including “a conflicting tax return” that showed an annual gross income that was different from what another tax return showed. “Both of the conflicting tax returns were signed and both [were] valid on their faces. The court gave great weight to this discrepancy and its impact on the court’s view of [Ali’s] credibility.” In light of the conflicting income information and credibility concerns, the court could properly decline to rely on Ali’s tax returns in determining his income.

Second, Ali argues the trial court erred in calculating his total income by adding credit card charges paid for by his businesses to his base income. He claims the credit card charges were not personal expenses for which his businesses paid, but were instead business-related expenses for which he was reimbursed. We reject his argument.

Here, the trial court reviewed Ali's credit card statements for the relevant periods and found substantial "personal expenses paid for his benefit by his employer." The credit card statements in the record do in fact show many charges that appear to be for personal expenses, such as purchases at grocery stores, a spa, a veterinary clinic, a sporting goods store, Netflix, pharmacies, and a dental office. The record also contains a chart Elham prepared for the trial court that shows the amounts of all personal expenses charged to Ali's credit cards and paid for by his businesses.

In contrast, Ali has not cited to anything in the record that supports his position that any of the charges were business-related, or that the trial court erred in calculating the personal expenses. We conclude there was ample evidence from which the court could find the credit card charges were additional income.²

Third, Ali argues the trial court "exceeded the bounds of reason" by requiring him to pay "nearly 100 percent of [his] take-home pay in support payments." This argument fails because it is based on the incorrect premise that his income consists only of his *base* income, when in fact the court properly attributed the personal credit card charges to him as additional income.

Fourth, Ali argues that Elham has failed to "seek full-time employment" and "continues to disregard the 'Seek Work Order[']'." It appears his argument is that the trial court should have imputed more than \$27,000 annual income to Elham. The court, however, stated in its judgment: "The court accepts [Ali's] contention and [Elham's] stipulation that \$27,000 a year income may be imputed to [Elham] for purposes of support." Having stipulated to the amount of imputed income, Ali is precluded from arguing for the first time on appeal that the amount was inadequate.

² Ali also argues that even if the credit card charges were additional income, the court nevertheless should not have included them in his total monthly income because the amounts of the charges fluctuated from month to month. We note, however, that the court took an *average* of the actual charges. Ali raises no argument and cites no authority in support of his purported position that it was improper to use an average.

2. Child Support – Amount

Ali contends the trial court should have awarded him more than \$347 in monthly child support for the support of the parties' minor child, R.H. Specifically, his argument is that the court should have added the \$3,000 in monthly spousal support payments he makes to Elham to Elham's total monthly income. This argument fails because "income" for purposes of child support calculations includes only "spousal support actually received *from a person not a party to the proceeding . . .*" (Fam. Code, § 4058, subd. (a)(1), italics added.) Because Ali *is* a party to the proceedings, his spousal support payments to Elham are not "income" to Elham for purposes of calculating child support. There was no error.

3. Child Support – Duration

Ali contends the trial court erred in terminating child support when R.H. turned 18 years old in February 2018 because R.H. did not complete high school until June 2019. The record shows, however, that the court did *not* terminate child support at that time. Rather, the court ordered Ali to pay \$3,000 in spousal support "less the [\$]347 child support obligation" for "a net of \$2,653 a month" "until [R.H.] emancipates . . ."

Although the trial court did not define the word "emancipates," Family Code section 3901, subdivision (a)(1), provides that the duty to pay child support "continues as to an unmarried child who has attained 18 years of age, is a full-time high school student, . . . and who is not self-supporting, until the time the child completes the 12th grade or attains 19 years of age, whichever occurs first." Here, because R.H. was still in high school when he turned 18 years old in February 2018, Elham's child support obligations continued until R.H. turned 19 years old in February 2019. Accordingly, Ali was entitled to subtract the \$347 in child support from his \$3,000 monthly spousal support payments to Elham until R.H. turned 19 years old.

Because the trial court did not terminate child support when R.H. turned 18 years old, there is no error for us to correct on appeal. If Ali believes he is owed any child

support and the parties are unable to reach a resolution regarding the issue, he must first seek relief in the trial court.

4. Credit Card Debt

Ali contends the trial court erred in holding him solely responsible for the parties' credit card debt. Specifically, he argues: "Respondent was the beneficiary of the life-style provided through the use of community assets including the credit cards. There is a balance in excess of \$120,000 due to these credit card companies and she should be equally responsible for them"

Ali has not cited to anything in the record that refers to any \$120,000 debt, or to any finding made by the trial court regarding such debt. Nor has he made any showing that any of the current \$120,000 balance on his credit cards was incurred before the date of separation.

It is the appellant's burden to affirmatively show error by citing an adequate record to support his summary of the facts and legal authority to support each analytical point made. (*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502.) These rules of appellate procedure apply to appellants who are representing themselves on appeal. (*Leslie v. Board of Medical Quality Assurance* (1991) 234 Cal.App.3d 117, 121.) Ali, who simply asserts, without citation to the record or authority that there is currently a \$120,000 credit card debt for which Elham is equally responsible, has not met his burden of showing error.

DISPOSITION

The judgment is affirmed. The parties shall bear their own costs on appeal.

Wiseman, J.*

WE CONCUR:

Siggins, P. J.

Petrou, J.

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* Retired Associate Justice of the Court of Appeal, Fifth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.